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Interim Lead Counsel for Indirect Purchaser Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE CAPACITORS ANTITRUST LITIGATION

**MDL No. 17-md-02801
Case No. 3:14-cv-03264**

This Document Relates to:

All Indirect Purchaser Actions

**INDIRECT PURCHASER PLAINTIFFS'
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF CLASS NOTICE
PROGRAM FOR ROUND 2
SETTLEMENTS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

Date: TBD
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT**, on May 10th or 17th 2018, at 10:00 a.m., or as soon
 3 thereafter as the matter may be heard,¹ in the Courtroom of the Honorable James Donato, United
 4 States District Judge for the Northern District of California, located at 450 Golden Gate Avenue,
 5 San Francisco, California, the Indirect Purchaser Plaintiffs (“IPPs”) will and hereby do move for
 6 approval of their class notice program for the Round 2 settlements² to provide notice of the
 7 proposed settlements to the class. As discussed more fully *infra*, IPPs’ proposed class notice
 8 program satisfies Fed. R. Civ. P. 23, complies with due process, and is virtually the same notice
 9 program that this Court previously approved in connection with IPPs’ Round 1 settlements,
 10 which have since been finally approved. *See* ECF Nos. 1457 (order approving notice program
 11 for Round 1 settlements); 1934 (final approval order for Round 1 settlements).

12 Plaintiffs’ class notice program constitutes “the best notice practicable under the
 13 circumstances . . .” Fed. R. Civ. P. 23(c)(2)(B). Plaintiffs’ plan provides direct mail notice to
 14 class members whose contact information was available from records provided by non-party
 15 distributors produced during the course of discovery in this litigation. The direct mail notice
 16 plan is supplemented by a robust publication program and social media plan. Taken together,
 17 the plan exceeds the requirements of Federal Rule of Civil Procedure 23, satisfies any due process
 18 concerns, and will fairly apprise putative Settlement Class Members of the existence of the
 19 settlement and their options under it.

20 This motion is based upon this Notice; the Memorandum of Points and Authorities in
 21 Support; the Declaration of IPPs’ Notice Program Expert, Linda Young from A.B. Data, Inc.,
 22 and attached exhibits, along with the notices themselves; and any further papers filed in support

23 ¹ In connection with this Motion, the Indirect Purchaser Plaintiffs are also filing a Motion to
 24 Shorten Time in order for the hearing on this matter to be heard on an expedited basis.

25 ² In addition to the foregoing settlements for which IPPs seek preliminary approval, the Round 2
 26 settlements include settlements that have already been preliminarily approved with Soshin
 27 Electric Co., Ltd, and Soshin Electronics of America, Inc. (collectively “Soshin”); and Hitachi
 Chemical Co., Ltd., Hitachi AIC Inc., and Hitachi Chemical Co. America Ltd. (collectively
 28 “Hitachi Chemical”). *See* Order Preliminarily Approving Soshin and Hitachi Chemical
 Settlements, ECF Nos. 1888, 2009.

1 of this motion as well as arguments of counsel and all records on file in this matter.

2 Dated: April 24, 2018

3 Respectfully Submitted,

4 **COTCHETT, PITRE & McCARTHY, LLP.**

5 By: /s/ Adam J. Zapala

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1 **STATEMENT OF THE ISSUES TO BE PRESENTED**

2 1. Whether the Court should approve the proposed class notice program and
3 establish a schedule for final approval of IPPs' proposed settlements with (a) the Holystone,
4 NCC/UCC, and Rubycon Defendants and (b) the previously preliminarily approved settlements
5 with the Hitachi and Soshin Defendants (collectively, the "Round 2 settlements.").

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Indirect Purchaser Plaintiffs’ (“IPPs”) proposed notice program seeking to provide
 4 the class with notice of the Round 2 settlements should be approved. The proposed notice
 5 program is a robust, multifaceted approach for delivering plain and easy to understand
 6 information about the settlements. IPPs have retained a recognized national expert, A.B. Data,
 7 Inc., that has designed a notice program that addresses the specific nature of the settlements and
 8 settlement classes at issue in this litigation. The notice program includes (1) direct mail notice,
 9 (2) publication notice, (3) internet and email notice, (4) an earned media plan, (5) e-newsletter
 10 notice/banner ads, (6) a case-specific website, and (7) a case-specific toll free number. This
 11 comprehensive, multipronged approach provides the Classes with the best notice practicable
 12 under the circumstances and satisfies Rule 23 and due process.

13 As set forth in more detail below, IPPs’ notice program will fairly apprise potential class
 14 members of the existence of the above-referenced settlements and their options in relation to
 15 those settlements. Accordingly, the Court should approve dissemination of class notice and
 16 establish a schedule for a final approval hearing on the settlements.

17 **II. STATEMENT OF RELEVANT FACTS**

18 As with the Round 1 settlements, the proposed notice provider is A.B. Data. A.B. Data
 19 has been appointed as notice, claims, and/or settlement administrator in hundreds of large
 20 consumer, civil rights, insurance, antitrust, ERISA, securities, and wage and hour cases,
 21 administering some of the largest and most complex class action settlements of all time. A.B.
 22 Data has experience involving all aspects of media, direct, and third-party notice programs, data
 23 management, claims administration, and settlement fund distribution. *See Declaration of Linda*
 24 *V. Young (“Young Decl.”) ¶ 6.* Other representative examples of A.B. Data’s experience are set
 25 forth at Exhibit 3 to the Young Declaration filed in support of this motion.

26 The objective of the proposed notice program is to provide notice of the proposed
 27 settlements to potential class members that is consistent with Rule 23 and due process. *Id.* ¶ 7.

1 A.B. Data has extensively researched data regarding the target audience's (*i.e.*, the proposed
 2 settlement classes) media consumption and based on this research has determined the most
 3 appropriate media vehicles that would best deliver notice to potential class members and provide
 4 them with the opportunity to see and respond to the notice. *Id.* ¶ 8. The notice program includes
 5 (1) direct mail notice, (2) publication notice, (3) internet and email notice, (4) an earned media
 6 plan, (5) e-newsletter notice/banner ads, (6) a case-specific website, and (7) a case-specific toll
 7 free number. As set forth in more detail below, IPPs' notice program will fairly apprise potential
 8 class members of the existence of the settlement agreements and their options in relation to the
 9 proposed settlements.

10 **A. Direct Mail Component**

11 The Notice program includes direct mail notice to approximately 400,000 class members
 12 for whom mailing addresses are available through productions from non party distributors. A.B.
 13 Data has processed these addresses through the national change of address ("NCOA") database,
 14 and using any updated information available in the NCOA database, will send postcard notice
 15 directly to those potential class members. The postcard notices will include the web address of
 16 the case-specific website and toll-free telephone number of the case-specific call center. Further
 17 analysis will be done of any mail returned non-deliverable after use of the NCOA database and
 18 follow up direct mail notice will be provided where appropriate.

19 **B. Publication Notice Plan**

20 As a means to supplement the direct notice program, IPPs have also proposed a
 21 publication notice program. The publication plan includes paid media and earned media
 22 components.

23 The paid and earned media plan includes advertising in a national publication; "banner"
 24 ads on national trade publication websites; "banner" ads targeting consumers and businesses who
 25 are electronic hobbyists and enthusiasts; "banner" ads in national e-newsletters targeted to the
 26 settlement classes; a custom email "blast" to opt-in subscribers of targeted publications; and a
 27 news release disseminated via earned media. *Id.* at ¶ 10.

1 A print ad will be placed in *The Wall Street Journal* to reach professionals and executives
 2 of manufacturers and industrial businesses that purchase capacitors. *Id.* ¶ 11.

3 “Banner” advertisements will be run on the following national trade publication websites
 4 and/or e-newsletters targeting electronics hobbyists and professionals in the electronics and
 5 purchasing industries who are large-scale purchasers of capacitors:

- 6 • Electronicdesign.com
- 7 • Machinedesign.com
- 8 • SourceESB.com
- 9 • Microwaves & RF – mwrf.com
- 10 • Powerelectronics.com
- 11 • HydraulicsPneumatics.com
- 12 • SourceToday.com
- 13 • nutsvolts.com
- 14 • eetimes.com
- 15 • ebnonline.com
- 16 • GlobalPurchasing.com

17 *Id.* ¶ 12.

18 In addition to the foregoing, “banner” ads will be placed via a variety of websites over
 19 30 days to a minimum of 14.8 million targeted business professionals within manufacturing
 20 industries and electronics hobbyists and enthusiasts who are technology savvy. Key strategies of
 21 contextual, behavioral, and predictive modeling has been utilized to target the banner ads to
 22 potential class members. A mix of mobile, laptop, and desktop devices will be targeted in this
 23 effort. *Id.* ¶ 13.

24 With respect to the earned media component, a news release regarding the case will be
 25 sent as an email “blast” to subscribers of the following publications:

- Penton Publications (including the websites Electronicdesign.com, Machinedesign.com, SourceESB.com, mwrf.com, Powerelectronics.com, GlobalPurchasing.com and HydraulicsPneumatics.com); and
 - EE Times.

Id. ¶ 14.

In addition to the notice efforts involving print publications and digital media, A.B. Data will disseminate a news release via the Business Wire distribution service to announce the notice of settlements. This news release will be distributed via Business Wire to more than 10,000 newsrooms, including print, broadcast, and digital media, across the United States. It will also be distributed to trade publications relevant to the industries and fields concerned. *Id.* ¶¶ 15-16.

C. Dedicated Settlement Website

The case-specific website is listed with major search engines to enable potential class members to get detailed information about the settlements and relevant documents, including the Complaint and the settlement agreements. *Id.* ¶ 17. The website is also provided on the proposed direct mail notice to class members, directing them to visit the settlement website to the extent they have additional questions or require more information. The online banner and text ads will include the website address and a link to the case-specific settlement website. *Id.* ¶ 18.

D. Toll-Free Number

All notices, including the direct mail notice and the print-media notices in the proposed notice program, will include a toll-free telephone number and a mailing address for class members to request or access the settlement notice and additional information about the case and the proposed settlements.

As a notice program that primarily targets entities and consumers that have purchased specific types of capacitors (a product used primarily in the manufacturing of products), data to quantify the reach of this program are not available through traditional media resources, such as MRI, that provide accredited media research. Based on the trade-media resources for the passive-component industry and the electronics, electrical, and purchasing fields, some of which state

1 that they deliver, in the words of one such source, “90% coverage of all companies in the passive
 2 component supply chain,” the proposed notice program satisfies Rule 23 requirements. *Id.* ¶ 19.

3 Finally, the proposed short form notice is attached to the Young Declaration as Exhibit
 4 5. The proposed long form notice is attached to the Young Declaration as Exhibit 6. As explained
 5 in the Young Declaration, these notices address each of Rule 23’s requirements in a clear and
 6 easily understood manner. Plaintiffs’ notice expert has opined that the Program delivers a
 7 minimum reach of 70% to the Class and meets the requirements of Rule 23 and communicates
 8 information by “adhering to the plain language requirement.” *Id.* Accordingly, the Notice
 9 Program and accompanying forms are reasonable and adequate under the circumstances, and are
 10 fairly calculated to apprise class members of their rights under the settlement. *See id.*

11 **III. ARGUMENT**

12 Rule 23 requires that notice be given in a reasonable manner to all class members who
 13 would be bound by a proposed settlement. *See Fed. R. Civ. P.* 23. “[T]he Court must direct to
 14 class members the best notice that is practicable under the circumstances, including individual
 15 notice to all members who can be identified through reasonable effort.” *Fed. R. Civ. P.*
 16 23(c)(2)(B). Notice of a proposed settlement is adequate and satisfies Rule 23 and due process if
 17 it “fairly apprise[s] the prospective members of the class of the terms of the proposed settlement
 18 and of the options that are open to them in connection with the proceedings.” *Walsh v. CorerPower*
 19 *Yoga LLC*, No. 16-cv-05610-MEJ, 2017 U.S. Dist. LEXIS 20974 (N.D. Cal. Feb. 14, 2017)
 20 (citing *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 174 (1974)). Class notice must afford
 21 potential Class Members the ability to “make an informed decision about their participation [in
 22 the litigation].” *Manual For Complex Litigation (Fourth)* § 21.311, at 289 (2004).

23 **A. IPPs’ Proposed Notice Program Comports with the Requirements of Rule 23 and
 24 Due Process**

25 In the context of Rule 23(b)(3) actions, “the court must direct to class members the best
 26 notice that is practicable under the circumstances,” and that notice “must clearly and concisely
 27 state in plain, easily understood language:

- (i) the nature of the action;
 - (ii) the definition of the class certified;
 - (iii) the class claims, issues or defenses;
 - (iv) that a class member may enter an appearance through an attorney if the member so desires;
 - (v) that the court will exclude from the class any member who requests exclusion;
 - (vi) the time and manner for requesting exclusion; and
 - (vii) the binding effect of a class judgment on members under Rule 23(c)(3)."

9 Fed. R. Civ. P. 23(c)(2)(B) While Rule 23 requires that reasonable efforts be made to reach all
10 class members, it does not require that each individual actually receive notice. *Silber v. Mabon*,
11 18 F.3d 1449, 1454 (9th Cir. 1994). A class settlement notice satisfies due process if it contains
12 a summary sufficient to “apprise interested parties of the pendency of the action and to afford
13 them an opportunity to present their objections.” *UAW v. GMC*, 497 F.3d 615, 629 (6th Cir.
14 2007) (*quoting Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). A
15 settlement notice need only be a summary, not a complete source of information. *See, e.g.,*
16 *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re “Agent Orange” Prod.*
17 *Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987); *Mangione v. First USA Bank*, 206 F.R.D. 222,
18 233 (S.D. Ill. 2001). The Ninth Circuit requires a general description of the proposed settlement.
19 *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir. 2004); *Torrissi v. Tucson Elec. Power*
20 *Co.*, 8 F.3d 1370, 1374-75 (9th Cir. 1993); *Mendoza v. United States*, 623 F.2d 1338, 1351 (9th
21 Cir. 1980).

22 IPPs' proposed notice program meets these standards. As an initial matter, this proposed
23 notice program is virtually the same in substance as the notice program this Court already
24 approved in connection with the Round 1 settlements. *See, e.g.*, Order Approving Class Notice
25 Program, ECF Nos. 1457 (order approving notice program for Round 1 settlements); 1934 (final
26 approval order for Round 1 settlements). The notice program begins by providing direct mail

1 notice for those class members for whom physical addresses were obtained in non-parties' data
 2 that IPPs received in discovery.

3 While direct mail notice is typically considered the best form of notice under Rule
 4 23(c)(3), the proposed notice program adds many additional components that make it a thorough,
 5 multilayered approach to notice designed to reach members of the Settlement Classes. This
 6 approach is adequate and reasonable under the circumstances. *Ross v. Trex Co.*, 2013 U.S. Dist.
 7 LEXIS 29081, * 6 (N.D. Cal. Mar. 4, 2013) ("Courts have consistently recognized that due
 8 process does not require that every class member receive actual notice . . . Due Process does not
 9 entitle a class member to 'actual notice,' but rather to the best notice practicable, reasonably
 10 calculated under the circumstances to apprise him of the pendency of the class action and give
 11 him a chance to be heard."); *see also In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 177
 12 F.R.D. 216, 231 (D.N.J. 1997) ("Courts have consistently recognized that due process does not
 13 require that every class member receive actual notice so long as the court reasonably selected a
 14 means likely to apprise interested parties"); *Bissonette v. Enter. Leasing Companywest*, No. 10-
 15 CV-00326-LRH-WGC, 2014 U.S. Dist. LEXIS 132634 (D. Nev. 2014) ("Under this 'best notice
 16 practicable' standard, courts retain considerable discretion to tailor notice to the relevant
 17 circumstances . . ."); *see also NEWBERG ON CLASS ACTIONS* § 4:35, at 309 ("When identification
 18 of class members for notice purposes poses a complex problem from a manageability
 19 perspective, then such members cannot be reasonably identified within the meaning of Rule
 20 23(c)(2) and are not entitled to individual notice.").

21 Additionally, as the Young Declaration makes clear, the contents of the notices themselves
 22 meet the requirements of Rule 23(c)(2)(B) and are provided in plain language that is
 23 understandable to the classes. The proposed long form notice includes (1) the case name and case
 24 number; (2) a description of the case; (3) a description of the settlement classes; (4) a description
 25 of the settlement agreements, including the monetary consideration and cooperation to be
 26 provided to the settlement classes; (5) the name of Interim Lead Counsel for IPPs; (6) a
 27 description of the releases being provided; (7) the final approval hearing date; (8) information
 28

1 about the final approval hearing; (9) information about the deadline for filing objections to the
 2 settlement agreements; (10) information about the deadline for filing requests for exclusion from
 3 the settlement classes; (11) that a class member can enter an appearance through an attorney if
 4 the member so desires; (12) the consequences of exclusion or remaining in the settlement classes;
 5 and (13) and how to obtain further information about the proposed settlement agreements. Young
 6 Decl., Exs. 5 and 6. This includes all of the information required by Rule 23(c)(2)(B) and more.

7 **B. The Court Should Establish a Schedule for the Notice Program and Final**
 8 **Approval of the Settlements**

9 If the Court grants preliminary approval of the settlements and grants this motion to
 10 approve a class notice program, a schedule should be established for the completion of the notice
 11 program, objections and requests for exclusion, and the briefing for attorneys' fees,
 12 reimbursement of reasonable litigation expenses, and for final approval. IPPs propose the
 13 following schedule:

Event	Time
Mail Notice	30 days after Order
Publication Begins	45 days after Order
Publication Ends	75 days after Order
IPPs' Motion for Attorneys' Fees and Reimbursement of Litigation Expenses	80 days after Order and 14 days before Exclusion and Objection Deadline
Exclusion and Objection Deadline	95 days after Order
Motion for Final Approval and Response to Objections (if any)	110 days after Order and 35 days before hearing
Final Approval Hearing	145 days after Order

